

(2020) 08 DEL CK 0207

In the Delhi High Court

Case No : Civil Writ Petition No. 5717 Of 2020

Sandeep Kumar ASI/EXE, CISF & Ors

APPELLANT

Vs

Union Of India Through Director General & Ors

RESPONDENT

Date of Decision : 27-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 08 DEL CK 0207

Hon'ble Judges : Manmohan , J;Sanjeev Narula , J

Bench : Division Bench

Advocate : Pallavi Awasthi, Anil Soni

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

CM APPL. 20667/2020 (for Exemption)

1. Exemption allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 5717/2020 & CM APPL. 20668/2020

3. The gravamen of the Petitioners who are 'direct-recruited' Assistant Sub-Inspector/Exe('ASI/Exe') in Central Industrial Security Force ("CISF") is that they have been unlawfully superseded in promotion to the rank of Sub-Inspector, by Constables/Head Constables, through Limited Departmental Competition Examination (LDCE); By way of the present writ petition, they are inter alia seeking directions to the respondents to consider them to the next higher rank of Sub-Inspector ("SI") along with consequential benefits. They also seek direction/order to the respondents for publishing Seniority List by placing them as seniors to the private respondents who were Constable/Head Constable before being promoted to the post of Sub-Inspector through LDCE. Further, they seek a direction to declare the promotion of such private respondents as illegal.

4. Briefly stated, the petitioners stood appointed as ASI/Exe by way of direct recruitments and are presently serving in the rank of Assistant Sub-Inspectors/ Exe ("ASI") at different units. In the year 2010, for the first-time direct recruitment was made to the post of ASI/Exe. Prior thereto, the only way to become Sub-Inspector was by way of promotion from the post of Constable/Head Constable with feeder cadre of ASI/Exe. The cadre promotion was from Constable to Head Constable; Head Constable to ASI; and ASI to Sub Inspector.

5. In terms of a notification issued in the year 2010, the method of recruitment to the post of Sub-Inspector became as (i) 50% by direct recruitment by SSC; (ii) 33% by promotion failing which by deputation; (iii) 17% by LDCE, failing which by promotion. The eligibility for promotion to the post of Sub-Inspector became ASI (Exe) who has completed 6 years regular service in the rank; failing which eleven years combined regular service in the rank of Head constable (General duty) or Head Constable (Driver) out of which at least one year should be in the rank of ASI (Exe) being in medical category SHAPE-1 along with successful completion of promotion cadre course of SI (Exe).

6. It is contended that on the basis of provisional inter-se seniority list of sub-Inspectors (Exe) for the period from year 2010 to 2013, Petitioners came to know that a number of Constables/ Head Constables have become SI through LDCE.

7. The learned counsel for the petitioners argues that after the introduction of the provision for direct recruitment to the post of ASI, the respondents took an in-principle decision not to select Constables/Head Constables for the post of SI through LDCE. To buttress his submission, he relies upon a

letter dated 11th May, 2016 issued by the respondents. Learned counsel submits that it was clarified in the said letter that no Constable can become SI/Exe through LDCE but contrarily, the respondents continued to proceed with its old practice of promoting Constable/Head Constable to the rank of SI through LDCE. He further submits that the note attached with the notification further added that if juniors, who have completed their qualifying or eligibility service, were being considered for promotion, then the seniors, who have completed at least 2 years of eligibility service, are to be considered for the promotion. In spite of having served for more than two years, Petitioners have not been considered for promotion. They made representations dated 16th April, 2018 and 21st April, 2018 to the DG, CISF, requesting the removal of anomaly/supersessions in promotion to the post of SI (through LDCE) for the period 2010 - 2013 and also requested publishing of seniority list in the rank of SI/Exe, but to no avail.

8. Aggrieved by the inaction on the part of the respondents, petitioners preferred W.P.(C) 9158/2018 before this Court praying for fixing their seniority over Sub-Inspectors, who got promotion by way of LDCE during the intervening period. The said writ petition was dismissed as withdrawn vide order dated 24th September, 2019 with liberty to file appropriate petitions in accordance with law.

Availing the liberty so granted, the present petition has been filed.

9. We have heard the learned counsel for the petitioners at length. At the outset, we had called upon him to explain the delay in approaching this Court for the reliefs sought in the present petition. The learned counsel could not give any satisfactory explanation, except for stating that Petitioners were pursuing their case departmentally by submitting representations. Hence, they did not approach the Court earlier.

10. In our considered opinion, the explanation offered by the petitioners is not convincing and the facts of the present case do not warrant any interference by this Court in exercise of our jurisdiction under Article 226 of the Constitution of India. Concededly, in the Recruitment Rules of 2010 for the post of SI, selection by LDCE, is one of the prescribed modes of recruitment. The recruitment rules in question continued as such and were amended only in 2014. The petitioners contend that it was a mistake on the part of the respondents in not implementing the decision taken at the time of direct recruitment of ASI as disclosed in the letter dated 11th May, 2016 which reads as under:

"Directorate General

Central Industrial Security Force

(Ministry of Home Affairs)

Block No. I3, CGO Complex,

Lodhi Road, New Delhi-03

No. E-31016/09/A.S/2016/Est.I/3. Dated: 11 May 2016

To

The Inspector General,

CISF APS HQrs., New Delhi.

Sub:- Unintelligible-differentia and unjust denial with regard to the Recruitment, Promotion and Service Conditions of Assistant Sub-Inspectors in CISF.

No 110410920 ASI/Exe Atul Sen of CISFASG Mumbai has sent an application dated 04.04.2016 (copy enclosed) to DG/CISF on the subject matter.

2. The Individual's contentions in the application has been examined. It is mentioned that placement of a post in Group 'B' or 'C' is not based on educational qualification. As per DoPT's instructions, post of SI/Exe whose Grade Pay is Rs. 4200/- is placed in Group 'B' and that of ASI/Exe whose Grade Pay is Rs. 2800/- is placed in Group 'C'. As regards LDCE examination, earlier provision of LDCE existed in the rank of SI/Exe, however, subsequent to introduction of direct recruitment in the rank of ASI/Exe since 2010, the provision of LDCE exam has been removed from the rank of SI/Exe and kept in ASI/Exe. Hence, no

Constable can become SI/Exe through LDCE. As regards other facilities, it is provided to all CISF personnel. The individual's contentions are wrong and have not merit. The individual may be informed accordingly.

4. This has the approval of competent authority.

--Sd--

(V.K. CHAURASIA)

ASSISTANT INSPECTOR GENERAL/ESTT."

11. Be that as it may, the fact remains that upto 2014, the recruitment rules had not been amended and therefore, the LDCE examinations were conducted as per Rules. Thus, in the intervening period, from 2010 to 2013, a number of Constables/ Head Constables become Sub-Inspectors through LDCE. The petitioners who were in the same department, were fully aware of the departmental examination being held by the respondents and did not make any protest at that point of time. They also did not take any remedial steps challenging the Recruitment Rules or the promotions made subsequent thereto. As a result, the Constables/Head Constables became senior to the petitioners. After nearly 5-8 years, petitioners filed a petition W.P. (C) 9158/2018 before this Court praying therein for fixation of seniority over the Sub-Inspectors who had got promotion by way of LDCE during the intervening period. Presumably, there were certain technical infirmities in the said petition and accordingly the same was dismissed as withdrawn with a liberty granted to file an appropriate petition vide order dated 24th September, 2019. Learned counsel for the petitioners strongly relies upon the letter dated 11th May, 2016 to stress on the point that it was the mistake on the part of respondents and petitioners should not be penalized for the same. We are afraid that the said communication would not be of any help the petitioners. It only notes the fact that provision of LDCE has been removed for selection to the post of SI. Even after being aware of the communication dated 11th May, 2016, there was complete inaction till 2018 when the first writ petition i.e. W.P.(C) 9158/2018 was preferred.

12. From the above discussion, it clearly emerges that the petitioners have no satisfactory explanation for the inordinate delay ranging between 5 to 8 years in filing the petition questioning the validity of the seniority and promotions assigned to the private respondents. The legal position for exercising discretionary power in disputes relating to seniority and promotion is no more res integra. Although, there is no fixed time-limit for filing a writ petition under Article 226 of the Constitution of India, however, it is a well settled law that the aggrieved persons should approach the Court expeditiously for the relief and it is not permissible for them to put forward stale claim. Delay or laches is one of the factors which is to be borne in mind by the Court while exercising its discretionary powers under Article 226. The Court may refuse to invoke its extraordinary powers if there is negligence or omission on the part of the petitioner or if he is guilty of unexplained delay and laches. It has been

repeatedly held that while exercising public law jurisdiction, courts should not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum. In *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566, Supreme Court held that "If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties."

13. The Supreme Court has also repeatedly held that a person aggrieved by the promotion of a junior over his head should approach the Court expeditiously and without any delay. It is manifest that a litigant who invokes the extraordinary jurisdiction of a Court for claiming seniority should do it at the earliest and within a reasonable period of time. Courts must refrain from exercising their extraordinary jurisdiction at a belated stage as in the meantime interest of third parties gets ripened and interference after enormous delay is undesirable. It becomes an obligation of the court to take into consideration the acts done during the interregnum. Thus, it would be unwise for us to entertain the present petition and exercise our extraordinary powers under Article 226 and to come to the rescue of persons who did not approach the Court expeditiously for the relief and elected to standby and allow the things to happen.

14. It is equally well settled that in service matters the question of seniority which remains in existence for a substantial period of time as unchallenged, should not be ordinarily disturbed. This is because the belated action results in disturbing the settled position. In the instant case it cannot be disputed that the validity and promotion assigned to private respondents and the resultant seniority has been in existence for a reasonable period of time and is now settled. Thus, the rights, that have accrued to private respondents by reason of delay in filing the writ petition should not be allowed to be disturbed. Entertaining the present petition would amount to questioning the settled seniority and cause administrative difficulties and complications. The petitioners, who are fence sitters have no cogent explanation for delay and laches in approaching this Court.

15. For the foregoing reasons, the petition alongwith pending applications is dismissed.